IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1317 of 2003
With
CRIMINAL APPEAL No. 1347 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANSING @ GALABHAI FULABHAI VAGHARI (TALPADA) - Appellant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :

Criminal Appeal No. 1317 of 2003

MR KIRTIDEV R DAVE for Appellant
MR KT DAVE ADDL. PUBLIC PROSECUTOR for Respondent

Criminal Appeal No. 1347 of 2003

MR SHAKEEL KURESHI for appellant

MR KT DAVE ADDL PP FOR respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 21/02/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. These two Criminal Appeals under Section 374 of the Code of Criminal Procedure ('the Code' for short) are directed against the judgment and order dated 15.9.2003 rendered in Sessions Case No.24 of 2003 by the learned Additional Sessions Judge, Fast track Court, District Kheda at Nadiad by which the appellants of both these appeals, who are original accused Nos.7 and 2 (A-7 and A-2 for short) respectively, are convicted for commission of the offences punishable under Sections 489A, 489B, 489C, 489D read with Section 114 and also under Section 120B of the Indian Penal Code ('IPC' for short) and both of them are sentenced to suffer RI for a period of ten years and fine of Rs.2,000/- and in default of payment

of fine, SI for four months for commission of the offence under Section 489A IPC, RI for ten years and fine of Rs.2,000/- and in default of payment of fine, SI for four months for commission of offence under Section 489B IPC, RI for seven years and fine of Rs.2,000/- and in default of payment of fine, SI for four months for the offence under Section 489C IPC, RI for ten years and fine of Rs.2,000/- and in default of payment of fine, SI for four months for commission of offence under Section 489D IPC and RI for six months and fine of Rs.800/- and in default of payment of fine, SI for one month for the offence under Section 120B IPC. It is also ordered that all the sentences imposed on the accused persons shall run concurrently.

2. The prosecution case, as disclosed from the FIR and unfolded during trial, is as under:

2.1. P.W.7, Bharatkumar Dahyaram Vaishnav, Police Inspector, Nadiad Town Police Station,

District Kheda, had received an information from reliable persons to the effect that prior to 1 ½ months counterfeited currency notes were in circulation. He conveyed the said information to P.W.22, A.L. Vaghela, PSI and P.W.20, NM Solanki, PSI and other police personnels of 'D' Staff and they were instructed to make sincere efforts to find out the root thereof. Thereafter prior to three days he received an information about a suspicious person and, therefore, police personnels of D staff were asked to keep continuous vigil and watch on the movement of the said person. He also remained in constant touch with those police personnels. On 4.7.2002 he received an information from a reliable informant that one person was going to handover counterfeited currency notes to someone. He, therefore, kept watch with panchas on the road near Mafatlal Apparels railway Crossing at Nadiad Mill Road wherefrom the said person was to pass, as per the information. It is further case of the prosecution that the said person came on a

scooter at 3 P.M. from Kamla. He along with other police personnel intercepted him and on being asked his name, he stated that his name is Firozbhai Allarakha, by cast Vora, residing at Kamla, Taluka Nadiad, District Kheda (A-2). On making search of his scooter, a bundle of currency notes of Rs.50/- denomination and other Rs.250/- (two notes of Rs.100/- and one note of Rs.50/-) were found from the pocket of his pant. The bundle of currency notes of Rs.50 denomination was new and appeared to be counterfeited. On looking into it, there were more notes of one and the same number. While comparing with the original note of Rs.50 denomination and on verifying the watermark, the said notes appeared to be counterfeited. The said notes were counted and they were hundred in number. The other notes of Rs.250 were original. The counterfeited notes were as under by segregating as per the numbers:

(i) 22 notes of No. 9 R S 312680

(ii)12 notes of No. 5 D C 214865

(iii)12 notes of No. 5 T U 117837

(iv) 33 notes of No. 4 U B 034459

(v) 18 notes of No. 2 S B 909057

(vi)04 notes of No. 5 R Q 211629.

The registration number of the scooter is GJ 1 AC 989 and the value of the said scooter was about Rs.5,000/- Therefore, he arrested A-2 with the counterfeited notes in presence of panchas.

2.2. Upon further interrogation, A-2 stated that the person who supplied him those counterfeited notes will be coming with other counterfeited notes near Bokadvad, Nadiad at about 4 p.m. as per the previous deal with him. Therefore, A-2, along with the counterfeited notes of Rs.50 denomination and the original Rs.250/- and the Bajaj scooter, were seized so that the police personnels can reach to the root of these counterfeited notes. Thereafter all of them, along with the panchas, kept watch on the road taking their position separately near

Bokadvad, Nadiad. As per the time given by A-2, one person came walking at about 4 O' clock in the evening and as A-2 gave signal about his arrival, the police personnels became alert. The said person approached A-2 and as soon as he was handing over three bundles covered in a blank paper after taking out from the waist portion of his pant, he was surrounded and caught by the police personnels. Thereafter the said person was arrested along with the counterfeited notes in presence of panchas. On inquiring his name, he told that he is Adimulam Balram, by cast Kavandar (Rajput) (Original accused No.1 who has been convicted by the trial court but has not chosen to file appeal) residing at Block No.99/769 Khokhra Housing Board, Hatkeshwar, Amraivadi, Ahmedabad. Thereafter three bundles in his hand covered in a blank paper and tied with a red coloured string were seized. On opening the paper, new notes of Rs.50 denomination were found. There were many notes of one and the same number which were counterfeited. On segregating

the same as per the numbers, they were as under:

(i) 68 notes of No. 7 E G 865641

(ii) 99 notes of No. 3 B D 571912

(iii) 97 notes of No. 7 S P 227660

(iv) 124 notes of No. 7 E W 023282

(v) 75 notes of No. 7 G H 593291

(vi) 120 notes of No. 4 M R 681072

(vii) 17 notes of No. 7 R F 020004.

On being search of the person of A-1, Rs.140 (two notes of RS.50 and four notes of Rs.10) in original were found. The aforesaid counterfeited notes, six hundred in total, were seized for investigation. Upon asking him as to from where did he bring the said notes, he stated that he was preparing the same and supplying at half rate. Thus counterfeited hundred notes of Rs.50 denomination found from A-2 and original Rs.250/- and Bajaj Scooter and the original Rs.140 and counterfeited six hundred notes of RS.50 denomination found from A-1 were seized and detailed panchnama in this regard was prepared in

presence of the panchas.

2.3. As per further case of prosecution, A-1 and A-2 both hatched criminal conspiracy and made counterfeited currency notes and used them as genuine notes and put them in circulation. Therefore, both of them have committed offence under Sections 489A, 489B, 489C, 489D read with Section 114 as well as Section 120 B IPC.

2.4. A complaint in respect of the aforesaid incident was lodged by P.W.7, B.D. Vaishnav, PI at Nadiad Town Police Station where it was registered as Ist CR No. 274 of 2002 for commission of the offences under sections 489A, 489B, 489C, 489D read with section 114 and 120B IPC. Thereafter further investigation was handed over to P.W.20, NM Solanki, who recorded the statements of police personnels and police officers who were present at the time of actual arrest of A-1 and A-2 and seizure of counterfeited currency notes from them.

Thereafter both the accused were further interrogated. On the basis of information given by A-1, the investigating officer visited the house of A-1 at Amraivadi, Ahmedabad, in presence of panchas wherefrom he recovered xerox machine, ½ rim blank paper, fevicoal, blade for cutting the papers, red threat and two pages on which currency notes of Rs.50 denomination were xeroxed. He has recovered all the instruments in presence of panchas form the house of A-1 and a report thereof was made to Amraivadi Police Station. Report of the seizure of the muddamal was reported to Amraiwadi police station. During further investigation, A-1 produced the bill for the purchase of xerox machine. P.W.20, NM Solanki also recovered the xerox copy of the ration card. During his further interrogation, names of A-3 and A-4 also divulged. Therefore A-3 and A-4 were arrested. Thereafter further investigation was handed over to P.W.22, AL Vaghela. On taking over the investigation, PW 22, AL Vaghela obtained remand of A-1 to A-4 which was granted. P.W.22,

AL Vaghela came to Ahmedabad together with A-1 and A-6, son of A-1 was also arrested as he was also found to be involved in the said offence, against whom separate FIR No. 227 of 2001 for commission of the offences under sections 489A, 489B, 489C, 489D read with Section 114 and Section 120B IPC at Odhav police station was filed and a copy of the said FIR was kept along with the FIR filed against A-1 and A-2. Thereafter during further interrogation of A-1 he stated as to from where he purchased the paper. During further interrogation, name of A-7 Mansingh Galabhai was divulged and he was traced out and in presence of panchas he was searched and during the search from the pocket of his pant, notes of Rs.50 denomination, in all 99 in number, were recovered. Therefore in presence of panchas, panchnama was prepared to the said effect. The notes were seized and sealed and A-7 was arrested. Thereafter during further interrogation and investigation all the remaining accused were also found to be involved

in the said scam and all of them were arrested and the currency notes seized from the accused persons were sent to FSL for analysis and thereafter further investigation was handed over to P.W 25 DT Rana. Since the investigation was completed and on receiving report from the FSL certifying that the notes recovered from the accused persons were counterfeited notes and as incriminating evidence was found against all the accused persons, charge sheet was filed before the learned Chief Judicial Magistrate, Nadiad against all the ten accused persons.

2.5. As all the offences with which the accused persons were charged with are exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate, Nadiad committed case to the Sessions Court, Kheda at Nadiad.

2.6. On committal, the learned Additional Sessions Judge to whom the case was made over for trial, framed charge against all the accused

persons for commission of the offences under sections 489A, 489B. 489C, 489D read with Section 114 and 120B IPC and read over and explained to them. As the accused persons pleaded not guilty to the same and claimed to be tried, they were put to trial by the learned Additional Sessions Judge, Nadiad in Sessions Case No.24 of 2003.

2.7. In order to bring home the charge levelled against the accused persons, the prosecution has examined as many as 25 witnesses and relied upon their testimonies, details of which have been narrated in para 3 of the impugned judgment and order. They are as under:

P.W. No.	Name	Ex. No.	Page No.
1	Kiritbhai Kuberbhai Parmar, Panch witness	41	255
2	Lalitbhai Somabhai Barot, Panch witness	43	259
3	Revandas Dhirumal Sejvani, Panch witness	44	261
4	Jethanand Bhojraj Gurnani, Panch witness	45	263
5	Suryakantbhai Chhaganbhai Tadvi, Panch witness	46	265

P.W. No.	Name	Ex. No.	Page No.
6	Dineshbhai Trikambhai Bhatia, Panch witness	47	267
7	Bharatkumar Dayaram Vaishnav, PI, complainant	48	269
8	Rasilaben Ratilal Shrimali	57	289
9	Harshkumar Amrutlal Patel	58	291
10	Sureshbhai Ramjibhai Kachchhi Patel	59	293
11	Bharatbhai Shamjibhai Patel	60	295
12	Rameshbhai Virjibhai alias Hiralal	61	297
13	Rameshbhai Vishrambhai	63	300
14	Hansrajbhai Bhimjibhai	64	302
15	Natvarsinh Shankarbhai Vaghela	65	303
16	Melabhai Khumanbhai Parmar	66	305
17	Gotabhai Bhagubhai Solanki	67	307
18	Bharat Kapilrai Mistri, FSL Officer	69	310
19	Laxmiben Mansingbhai alias Galabhai	72	328
20	Navalsinh Mathursinh Solanki, PSI, Investigating Officer	73	330
21	Harshadbhai alias Tino Khumansing	82	365
22	Abhaysinh Lalubha Vaghela, PSI, Investigating Officer	84	368
23	Kanjibhai Vithalbhai Dasaniya, Zonal Officer, Maninagar	95	396
24	Mayurbhai Kanaiyalal Shah	100	405
25	Dashrathsinh Takhatsinh Rana, PSI, Investigating Officer	102	410

2.8. To prove the charge against the accused, the prosecution has also produced in all 16 documents and relied upon the contents of the same. They are mentioned in paragraph 4 of the impugned judgment and order. The relevance of those documents would be discussed hereinafter in this judgment as and when required.

2.9. After recording of the evidence of the prosecution witnesses was over, the trial court explained to the accused persons the circumstances appearing against them in the evidence of the prosecution and recorded their further statement under section 313 of the Code. In their further statement, the accused persons denied the case of the prosecution in toto and reiterated that they are innocent and have been falsely implicated. However, they did not lead any evidence nor did they examine any witness in support of their defence.

2.10. On appreciation, evaluation,

analysis and scrutiny of the evidence on record, the trial court held that the prosecution has failed to establish the complicity of the accused Nos.3 to 6 and 8 to 10 for commission of the offences under sections 489A, 489B, 489C, 489D read with Section 114 and 120B IPC and, therefore, they are acquitted of the offences with which they were charged whereas the prosecution has established the complicity of A-1, A-2 and A-7 from whom counterfeited currency notes were recovered and from the house of A-1 xerox machine and other articles and materials used for counterfeiting currency notes were recovered and, therefore, A-1, A-2 and A-7 conspired together in this scam of counterfeiting currency notes. It is also held by the trial court that direct evidence with regard to conspiracy is difficult to obtain. However, on the basis of the circumstantial evidence, it is proved that A -2 and A-7 conspired with A-1 in the scam of counterfeiting currency notes and, therefore, A-1, A-2 and A-7 are held guilty for

commission of the offences under Sections 489A, 489B, 489C, 489D read with Section 114 and Section 120B IPC and accordingly they are convicted for the same and sentenced to suffer imprisonment about which reference is made in earlier paragraph of this judgment, which has given rise to instant two appeals at the instance of A-7 and A-2.

3. Criminal Appeal No.1317 of 2003 is filed by A-7 whereas Criminal Appeal No. 1347 of 2003 is filed by A-2. So far as A-1 is concerned, though he has been convicted along with A-2 and A-7, he has not chosen to file appeal.

4. Mr. Kirtidev Dave, learned advocate for A-7 and Mr. Shakeel Kureshi, learned Advocate for A-2, have submitted that there is no evidence that A-7 and A-2 have hatched conspiracy with original A-1, who is not before this court, from whom all the articles, xerox machine and materials used for preparing the counterfeited

currency notes were recovered. There is no evidence to the effect that there is a meeting of mind prior to purchasing the machines, articles and materials for forging or counterfeiting currency notes. So far as A-2 and A-7 are concerned, according to them, it is true that counterfeited currency notes of the denomination of Rs.50 were recovered form them and the serial numbers were also same to each other. However, they are not the makers of the counterfeited notes or possessor of the machine and instruments used for making the counterfeited currency notes. Therefore, so far as conviction for commission of offences under Sections 489A, 489B and 489D IPC is concerned, in absence of any evidence against them, deserves to be quashed and set aside. So far as the conviction under Section 489C is concerned, the independent witnesses like panchas have not supported the seizure of the counterfeited currency notes from them and, therefore, it is totally unsafe to convict them even for commission of the offence under section

498C IPC merely relying upon the evidence of police personnels. Alternatively, they submitted that even if this court comes to the conclusion that they have committed offence under Section 489C IPC, which is punishable with imprisonment of either description for a term which may extend to seven years, or with fine, or with both, at the most the maximum imprisonment that can be imposed on them would be seven years. They have also submitted that both the accused have undergone around 4 ½ years in jail and under these circumstances by showing leniency, the period of imprisonment undergone by them may be treated as substantive sentence for commission of the offence under section 489C IPC and accordingly the judgment and order of conviction and sentence passed against them for commission of the offences under Sections 489A, 4389B, 489D read with section 114 and Section 120B IPC may be quashed and set aside and while maintaining the conviction under Section 489C the period of imprisonment undergone by them so far may be

treated as substantive sentence for commission of this offence and the appeals may be partly allowed. They, therefore, urged to partly allow the appeals.

5. In counter submission, Mr. KT Dave, learned APP for respondent-State of Gujarat, has contended that there is voluminous evidence against both the accused for commission of offences under Sections 489A, 489B, 489C, 489D read with Section 114 and Section 120B IPC as A-2 was caught read handed with counterfeited currency notes and on the basis of his statement, A-1 was also caught with counterfeited currency notes and on the basis of the statement of A-1, the investigation officer has visited his house from where all necessary xerox machine, instruments and materials for forging counterfeited currency notes were seized. So far as A-7 is concerned, from him also counterfeited currency notes were recovered, the numbers of which are similar to the numbers of the

counterfeited notes which were recovered from A-2. Therefore, all the three accused A-1, A-2 and A-7 have hatched criminal conspiracy for preparing and forging counterfeited currency notes. According to him, it is true that panchas have turned hostile but the evidence of the police personnels who have no axe to grind against the accused persons, is so glaring and of sterling quality that the deficiency in the prosecution, if the turning of panchas hostile can be called so, has paled into insignificance. Therefore, there is no reason to discard the evidence of the police personnels. He has also asserted that the offence of counterfeiting currency notes is a crime against the Nation and it will affect the economy of the country adversely and, therefore, no leniency can be shown against any of the accused persons. He has therefore submitted that there is no merit in both the appeals and urged to dismiss both the appeals.

6. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a compete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read an re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of the caution sounded by the Supreme Court while dealing with criminal appeals, this court has examined the entire evidence on record for itself independently of the trial Court and considered the arguments advanced on behalf of the accused persons and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence.

7. At the outset, be it noted that the trial court has acquitted all the accused except A-1, A-2 and A-7 of the offences punishable under

Sections 489A, 489B, 489C, 489D read with Section 114 and 120B IPC. A-1 has not preferred appeal against the order of conviction and sentence and, therefore, to examine whether A-2 and A-7 have been rightly held guilty by the trial court for commission of the said offences, according to this Court, the relevant evidence which is required to be reappreciated is that of P.W.7, BD Vaishnav, PI- complainant, Ex.48, P.W.18, Bharat Kapilrai Mistri, Scientific Officer of FSL, Nadiad, Ex.69, P.W.20, Navalsinh Mathursinh Solanki, PSI, Investigating Officer, Ex.73, P.W.22, Abhaysinh Lalubha Vaghela, PSI, Investigating Officer, Ex.84 and P.W.25, Dashrathsinh Takhatsinh Rana, PSI, Investigating Officer, Ex.102 and P.W.3, Revandas Dhirumal Sejvani, panch witness, Ex.44, P.W.4, Jethanand Bhojraj Gurnani, panch witness, Ex.45, P.W.5, Suryakantbhai Chhaganbhai Tadvi, Pach witness, Ex.46 and P.W.6, Dineshbhai Trikambhai Bhatia, Panch witness, Ex.47.

8. In order to prove that the currency notes which were recovered from A-2 and A-7 were counterfeited currency notes, the prosecution has examined P.W.18, Bharat Kapilrai Mistri, a Scientific Officer of FSL, Nadiad, Ex.69, page 310 of the paper book. He has, inter alia, testified that he is serving as a Scientific Officer in FSL, Nadiad for the last 20 years. He had received 3 parcels, in sealed condition, to examine the same in connection with the crime registered vide CR No. 276 of 2002 at Nadiad Town Police Station. He examined the currency notes which were packed in the three parcels. According to him, the currency notes of Rs.50 denomination sent to FSL, Nadiad for analysis were counterfeited currency notes and not genuine currency notes. He has also produced report in this connection which is at Ex.71. A perusal of Ex.71, page 322 of the paper book, shows that he has certified that the notes received for analysis were counterfeited currency notes. The said report also bears his signature. Therefore,

evidence of P.W.18, Bharat Kapilrai Mistri, gets corroboration from the report Ex.71. Therefore, it is duly proved that the currency notes which were recovered from A-2 and A-7 were counterfeited currency notes. The trial court has, therefore, rightly held that the currency notes which were recovered from A-2 and A-7 were counterfeited currency notes. It may also be noted that the learned advocates for the accused have also not disputed the said aspect. However, this Court has, just with a view to record its satisfaction, examined this piece of evidence.

9. This takes us to examine as to whether A-2 was found with counterfeited currency notes when he was intercepted and apprehended by P.W.7. BD Vaishnav, Ex.48. In this connection, the prosecution has examined P.W.7, BD Vaishnav, PI, complainant, Ex.48, page 269 of the paper book. He has, inter alia, testified that at the relevant time he was working as Police Inspector, Nadiad Town Police Station, District Kheda, and

he had received an information from reliable persons to the effect that prior to 1 ½ months counterfeited currency notes were in circulation. He conveyed the said information to P.W.22, A.L. Vaghela, PSI and P.W.20, NM Solanki, PSI and other police personnels of 'D' Staff and they were instructed to make sincere efforts to find out the root thereof. Thereafter prior to three days he received an information about a suspicious person and, therefore, police personnels of D staff were asked to keep continuous vigil and watch on the movement of the said person. He also remained in constant touch with those police personnels. On 4.7.2002 he received an information from a reliable informant that one person was going to handover counterfeited currency notes to someone. He, therefore, kept watch with panchas on the road near Mafatlal Apparels Railway Crossing at Nadiad Mill Road wherefrom the said person was to pass, as per the information. He has further testified that the said person came on a scooter at 3 P.M.

form Kamla. He accosted him and on being asked his name, he stated that his name is Firozbhai Allarakha, by cast Vora, residing at Kamla, Taluka Nadiad, District Kheda (A-2). On making search of his scooter, a bundle of currency notes of Rs.50/- denomination and other Rs.250/- (two notes of Rs.100/- and one note of Rs.50/-) were found from the pocket of his pant. The bundle of currency notes of Rs.50 denomination was new and appeared to be counterfeited. On looking into it, there were more notes of one and the same number. While comparing with the original note of Rs.50 denomination and on verifying the watermark, the said notes appeared to be counterfeited. The said notes were counted and they were hundred in number. The other notes of Rs.250 were original. The counterfeited notes were as under by segregating as per the numbers:

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The registration number of the scooter is GJ 1 AC 989 and the value of the said scooter was about Rs.5,000/- Therefore, he arrested A-2 with the counterfeited notes in presence of panchas. He further testified that upon further interrogation, A-2 stated that the person who supplied him those counterfeited notes will be coming with other counterfeited notes near Bokadvad, Nadiad at about 4 p.m. as per the previous deal with him. Therefore, A-2, along with the counterfeited notes of Rs.50 denomination and the original Rs.250/- and the Bajaj scooter, were seized so that the police personnels can reach to the root of this counterfeited notes. Thereafter all of them, along with the panchas, kept watch on the road taking their position separately near Bokadvad, Nadiad. As per the time given by A-2, one person came walking at about 4 O' clock in the evening and as A-2 gave signal about his arrival, the

police personnels became alert. The said person approached A-2 and as soon as he was handing over three bundles covered in a blank paper after taking out from the waist portion of his pant, he was surrounded and caught by the police personnels. Thereafter the said person was arrested along with the counterfeited notes in presence of panchas. On inquiring his name, he told that he is Adimulam Balram (A-1), by cast Kavandar (Rajput) residing at Block No.99/769 Khokhra Housing Board, Hatkeshwar, Amraivadi, Ahmedabad. Thereafter three bundles in his hand covered in a blank paper and tied with a red coloured string were seized. On opening the paper, new notes of Rs.50 denomination were found. There were many notes of one and the same number which were counterfeited. On segregating the same as per the numbers, they were as under:

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On being search of the person of A-1, Rs.140 (two notes of RS.50 and four notes of Rs.10) in original were found. The aforesaid counterfeited notes, six hundred in total, were seized for investigation. Upon asking him as to from where did he bring the said notes, he stated that he was preparing the same and supplying at half rate. Thus counterfeited hundred notes of Rs.50 denomination found from A-2 and original Rs.250/- and Bajaj Scooter and the original Rs.140 and counterfeited six hundred notes of RS.50 denomination found from A-1 were seized and detailed panchnama in this regard was prepared in presence of the panchas. He has lodged the complaint in this connection, which is on record at Ex.51.

9.1. It may be noted that he was cross-examined at length by the learned advocates for the

accused persons but nothing substantial could be brought out which would impeach his credibility and, therefore, there is no reason to disbelieve the evidence of P.W.7, BD Vaishnav. Therefore, it is duly proved that A-2 was found with counterfeited currency notes when he was apprehended and arrested by P.W.7 and other police officers.

10. The prosecution has thereafter examined and relied upon the testimony of P.W.20, Navalsinh Mathursinh Solanki, PSI, Ex.73, page 330 of the paper book. He has also investigated the case. He has also testified on the similar line as deposed by P.W.7, BD Vaishnav. Therefore, according to this court, it is not necessary for us to reproduce the evidence of this witness in verbatim. Suffice it to say that throughout he was with P.W.7, BD Vaishnav, PI and in his presence A-2 was intercepted and apprehended with counterfeited currency notes and xerox machines and other materials for preparing

counterfeited currency notes were recovered from A-1. It may be noted that this witness was also cross-examined at length by the learned advocates for the accused but nothing substantial has been brought out which would impeach his credence.

11. The prosecution has thereafter examined and relied upon the testimony of P.W.22, Abhaysinh Lalubha Vaghela, PSI, Ex.84, at page 368 of the paper book. He has also investigated the case and accompanied P.W.7, BD Vaishnav, PI. He has testified that in his presence A-2 was intercepted and apprehended with counterfeited currency notes and in his presence the xerox machine and other articles and materials for preparing counterfeited currency notes were recovered from A-1. He has further testified that further investigation was carried out by him on the basis of the statement of co-accused and he had apprehended and arrested remaining accused also along with A-7. During his investigation, name of A-7, Mansing alias

Galabhai Fulabhai Vaghari was also divulged and he was traced out and in presence of panchas the person of A-7 was searched and from the pocket of his pant, in all 99 counterfeited currency notes were recovered. Thereafter he prepared the panchnama in presence of panchas and the said currency notes recovered from A-7 were seized and sealed. He has also testified that so far as remaining accused are concerned, no currency notes were recovered from them. However, they were also charge-sheeted. This witness was also subjected to lengthy cross-examination by the learned advocates for the accused persons but nothing substantial has been brought out which would impeach his credibility which would raise any doubt about the creditworthiness of his oral testimony.

12. The prosecution has thereafter examined P.W.25, Dashrathsinh Takhatsinh Rana, PSI, Ex.102, page 410 of the paper book. He has also investigated the case. He has inter alia

testified that since the investigation was completed by the police officers who had investigated the case earlier, he filed the charge-sheet against all the accused on 18.9.2002. This witness was also cross-examined by the learned advocates for the accused persons but nothing substantial could be brought out from his evidence.

This is the sum and substance of the evidence of the police officers examined by the prosecution.

13. On reappraisal, reappreciation, reanalysis, reevaluation and close scrutiny of the evidence of P.W.7, BD Vaishnav, PSI, P.W.18, BP Mistri, Scientific Officer of FSL, P.W.20, NM Solanki, PSI, P.W.22, AL Vaghela, PSI and P.W.25, DT Rana, PSI, there is no manner of doubt that when A-2 and A-7 both were intercepted and apprehended they were carrying counterfeited currency notes with them and on the basis of the

statement of A-2, A-1 was also intercepted and apprehended when he was trying to handover the counterfeited currency notes to A-2 and during search, from his house the xerox machine and other articles and materials used for counterfeiting the currency notes were recovered. The matter did not rest there. So far as the recovery of counterfeited currency notes from A-7 is concerned, some of the Serial Numbers found in the counterfeited currency notes were the same and tallying with the counterfeited currency notes recovered from A-2.

14. In view of the aforesaid evidence, it has to be held that A-2 and A-7 were found with counterfeited currency notes of Rs.50 denomination when they were intercepted and arrested by police officers.

15. It is feebly contended by the learned advocates for the accused that so far as P.W.3, Revandas Dhirumal Sejvani, Ex.44, page 261,

P.W.4, Jethanand Bhojraj Gurnani, Ex.45, page 263 of the paper book, P.W.5, Suryakantbhai Chhaganbhai Tadvi, Ex.46, page 265 of paper book and P.W.6, Dineshbhai Trikambhai Bhatia, Ex.47, page 267 of the paper book, they are panch witnesses in whose presence the counterfeited currency notes were recovered from A-7 and A-2 and they have turned hostile and, according to them, since independent witnesses like the panch witnesses have turned hostile, the prosecution has failed to establish the basic fact that the counterfeited currency notes were recovered from A-7 and A-2, according to this court, has no merit at all.

16. It is well settled by catena of decisions of the Supreme Court that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over-board as unreliable. It may be realized that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown

and is ever on the increase. It needs hardly to be emphasized hat the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision to the case were to depend solely on the testimony of panch witnesses regardless of the evidence of police officers, in theory, it would be giving a right to veto to the panch as so far as the question of culpability of an accused is concerned, which is not permissible in criminal jurisprudence. It is well settled that without good ground being pointed out, testimony of police officers, if otherwise found to be true and dependable, cannot be discarded by the court on the ground that they are police officers. On the facts and in the circumstances of the case, this Court finds that the testimonies of P.W.7, P.W.20, P.W.22 and P.W.25 not only inspire confidence but get corroboration from the other evidence on record and from the evidence P.W.7, BD Vaishnav, PI, P.W.20, NV Solanki, PSI, Ex.73, P.W.22, AL Vaghela, PSI and other witnesses, the contents

of the panchnamas, which are on record at Ex.87 and Ex.50, with respect to the recovery of counterfeited currency notes from A-7 and A-2 respectively are proved.

17. In view of the aforesaid conclusion, according to us, the impact of turning of panchas hostile pales into insignificance in view of the fact that the evidence of the police officers are of sterling quality and in the instant case, so far as evidence of P.W.7, BD Vaishnav, P.W.20, NM Solanki, P.W.22, AL Vaghela and P.W.25, DT Rana who are police officers and P.W.18, BK Mistri, Scientific Officer of FSL, are of sterling quality inspiring confidence and, therefore, their evidence can be relied upon to come to the conclusion that A-2 and A-7 were found with counterfeited currency notes when A-2 was intercepted and apprehended by P.W.7, BD Vaishnav, PI and when A-7 was intercepted and apprehended by P.W.22, AL Vaghela, PSI.

18. Having held that A-2 and A-7 were found

with counterfeited currency notes, now the question that arises for consideration of this court is as to what offence they have committed? The prosecution case is that they have committed offences punishable under Sections 489A, 489B, 489C, 489D read with Section 114 and section 120B IPC.

18.1. For deciding this question, it would be appropriate and advantageous to refer to Sections 489A, 489B, 489C and 489D IPC, which read as under:

> “489A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
>
> Explanation: For the purposes of this section and of Sections 489B, 489C, 489D and 489E, the expression “bank-note” means a promissory

note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

489B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

489C. Whoever has in his possession any forged or counterfeit currency-note or bank note, knowing or having reason to believe the same to be forged or counterfeit and

intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

489D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

19. It has been held by this Court that A-2 and A-7 were found with counterfeited currency notes. However, the question that requires to be considered by this Court is whether the trial

court has rightly convicted them for commission of the offences under sections 489A and 489D IPC. So far as Section 489A IPC is concerned, it is a penal provision which provides that whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished whereas so far as Section 489D is concerned, it provides that whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished. It is an admitted fact that so far as A-2 and A-7 are concerned, the prosecution has not been able to establish that they have counterfeited, or knowingly performed any part of the process of counterfeiting, any currency note or bank note or they were found with performing any part of the process of making, or instrument or material for the purpose of being

used, or knowledge or having reason to believe that it is intended to be used, for forging or counterfeiting any currency note or bank note.

19.1. As per prosecution case, they are convicted with the help of Section 120B IPC. Section 120B IPC deals with punishment of criminal conspiracy. For the purpose of proving criminal conspiracy, the prosecution must establish the following:

(i) that the accused agreed to do or caused to be done an act;
(ii)that such act was illegal or was to be done by illegal means;
(iii) that some overt act was done by one of the accused in pursuance of the agreement.

To prove the criminal conspiracy, prosecution must establish that there was meeting of mind between two persons to do an unlawful act. It is very difficult to get direct evidence to prove criminal conspiracy and it can be proved only by

circumstantial evidence. However, it is not sufficient in order to convict a person under this section, merely to prove that he had been associating with the other accused at a certain place and on his arrest endeavored to extricate himself from being accused of some thing connected with the conspiracy; and the prosecution cannot complete what is necessary in order to show that he was a person who concerted with others by proving that he was friendly with the other accused and was anxious to escape observation or even was doing his best to conceal his whereabouts. In cases of conspiracy, the agreement between the conspirators cannot generally be directly proved, but only inferred from the established facts in the case. A conspiracy need not be established by evidence of an actual agreement between the conspirators and overt acts raise a presumption of an agreement and knowledge of the purpose of the conspiracy. The connection has to be established with the conspiracy and not with the separate acts of different conspirators which are the overt acts

of the different individuals in proof of the conspiracy. Overt acts may properly be looked at as evidence of the existence of a concerted intention and in many cases it is only by means of overt acts that the existence of the conspiracy can be made out. But the criminality of the conspiracy is independent of the criminality of the overt act. To prove conspiracy it is not necessary that there should be direct communication between each conspirer and every other but the criminal design alleged must be common to all.

20. In view of the foregoing discussion as well as threadbare examination of the entire evidence on record which has been discussed at length in the earlier paragraphs of this judgment, according to us, in instant case, there is no direct or circumstantial evidence against A-2 and A-7 for commission of offence under sections 489A, 489D read with Section 114 and Section 120B IPC. Therefore, both the accused persons cannot be convicted for commission of the

offences under Sections 489A, 489D read with Section 114 and Section 120B IPC. The trial court has committed serious error in convicting A-2 and A-7 for commission of offences under sections 489A, 489D read with Section 114 and Section 120B IPC. Therefore, the order convicting and sentencing A-2 and A-7 for commission of offences under sections 489A, 489D read with Section 114 and 120B IPC deserves to be quashed and set aside and they are required to be acquitted of the said charges.

21. The next question which is required to be answered by us as to whether the trial court has rightly recorded conviction and sentence against A-2 and A-7 for commission of offences under Sections 489B and 489C IPC.

22. So far as Section 489C IPC is concerned, it is a penal provision for possessing any forged or counterfeited currency-note or bank note, knowing or having reason to believe the same to be forged or counterfeited and intending to use

the same as genuine or that it may be used as genuine. There is ample evidence that both A-2 and A-7 were found with not merely one or two counterfeited currency notes but a large number of counterfeited currency notes of Rs.50 denomination and, therefore, both the accused were knowing that they were counterfeited currency notes, possessed the same for using the same as genuine notes. Therefore it has to be held that both of them have committed the offence under section 489C IPC.

23. So far as Section 489B is concerned, it is a penal provision for selling to, or buying or receiving from, any other person, or otherwise trafficking in or using as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit. In this connection, it is required to be noted that it has also come in evidence that A-2 was not only found with counterfeited currency notes but in presence of police officers he tried to obtain counterfeited

currency notes from A-1 who came with 3 bundles of fake currency notes of Rs.50 denomination which were to be used as genuine. Therefore, charge against A-2 for commission of the offence under section 489B is also proved.

24. So far as A-7 is concerned, a number of counterfeited currency notes of Rs.50 denomination have been found from him and serial number of many notes were tallying with the fake currency notes found from A-2. Therefore, there is circumstantial evidence to the effect that A-2 and A-7 also had the transaction between both of them in connection with circulation as well as use of counterfeited currency notes as genuine and therefore A-7 is also found guilty for commission of offence under Section 489B IPC.

25. In view of the foregoing discussion, both A-2 and A-7 are found guilty of the offences under sections 489B and 489C IPC. The trial court has, therefore, rightly convicted both the accused Nos. A-2 and A-7 for commission of the

offences under Sections 489B and 489C IPC.

26. Now the question that requires to be considered is as to what sentence should be imposed upon them for commission of offence under Sections 489B and 489C IPC.

27. The trial court has sentenced A-2 and A-7 to suffer RI for ten years and fine of Rs.2,000/- and in default of payment of fine, SI for further period of four months for commission of offence under section 489B IPC and RI for seven years and fine of Rs.2,000/- and in default of payment of fine, SI for further period of four months for commission of the offence under section 489C IPC.

28. Mr. Kirtidev Dave, learned Advocate for A-7 and Mr. Kureshi, learned Advocate for A-2 have urged that the sentence awarded to both the accused may suitably be modified by reducing the same by taking a liberal and lenient view, showing mercy on them.

28.1. In support of their aforesaid contention, on behalf of A-2, his father Allarakhabhai Vora, has filed affidavit stating mitigating circumstances for reducing the sentence that his son, A-2, is aged about 26 years and is having no antecedents of any nature and he is residing with him along with his mother who is aged about 55 years. They are coming from a very poor family and they are residing in a kacha premise of one room and their financial condition is also not good. He and his wife are also not being looked after by his two other sons who are residing separately since long. He is earning his livelihood through a tea lorry near his residence and A-2 was helping him by doing labour work at his tea lorry. At present they are not feeling well and they are dependent on their son A-2 who was looking after them and they are in need of his support at this old age.

28.2. A-7, Mansing alias Galabhai Vaghari, who is on furlough leave, has filed affidavit showing the mitigating circumstances for reducing

the quantum of sentence. He has, inter alia, stated that he is aged 42 years and there is no criminal track record of him or any member of his family. His father has expired while he was in custody. His mother is aged 75 years. She has diabetes and BP problem. He had four brothers. Two of them have expired and two younger brothers are residing separately. His wife Laxmiben is suffering from TB. He has two sons and two daughters. They are aged 18, 14, 16 and 16. The elder son had met with an accident in January 2004. He had granted temporary bail for this purpose by order dated 6.2.2004 and his son Sanjay is having some difficulty in walking even today. After his conviction, the twin daughters and the elder son Sanjay had to abandon their study. All the children are in the age group that they can study further if situation permits. At present the family is maintained by his wife by doing domestic work and she has to undertake this work despite her bad health. He had suffered a mild heart attack. He has developed the problem of fistula during the stay in the jail. He has

also the problem of asthma. He is poor. The pecunary situation is demonstrated by him by stating that when his father was sick he prayed for temporary bail which was granted on certain conditions on 11.12.2003 which included deposit of certain amount but he could not manage the fund and, therefore, he could not see his father thereafter on 1.1.2004 his father died. Thereafter he approached the Court for temporary bail which was granted by order dated 2.1.12004 and he could attend the after death ceremonies only. He had applied for temporary bail to see his ailing brother and the bail was granted subject to depositing Rs.20,000/- but he could not deposit the said amount. Again he applied for temporary bail which was granted by substituting the condition of depositing the amount by furnishing surety by order dated 28.10.2005 and from the above, his impoverishment is demonstrated by him.

29. In view of the aforesaid state of affairs and the mitigating circumstances which are narrated

in the affidavits, according to us, there is some substance in the submission of the learned advocates for the A-2 and A-7 to modify the sentence by reducing the it to a certain extent. In that view of that matter, according to this court, if both A-2 and A-7 are sentenced to undergo RI for 7 years and fine of Rs.2,000/- and in default of payment of fine, to undergo SI for a further period of four months for commission of the offence under Section 489B whereas RI for 5 years and fine of Rs.2,000/- and in default of payment of fine, SI for a further period of four months for commission of offence under Section 489C IPC the same would meet the ends of justice.

30. In the premises above, the impugned judgment and order convicting and sentencing A-2 and A-7 for commission of offences under Sections 489A and 489D read with Section 114 and Section 120B deserves to be quashed and set aside and they deserve to be acquitted of the said offences whereas the order convicting A-2 and A-

7 for commission of the offences under Sections 489B and 489C deserves to be upheld, however, by modifying the sentence by reducing the same as stated herein above.

31. For the foregoing reasons, both the Criminal Appeals succeed in part and accordingly they are partly allowed. The impugned judgment and order dated 15.9.2003 passed by the learned Additional Sessions Judge, Fast Track Court, Kheda District at Nadiad, in Sessions Case No.24 of 2003 convicting and sentencing A-2 and A-7 for commission of offences under Sections 489A and 489D read with Section 114 and 120B IPC is hereby quashed and set aside and they are acquitted of the said offences whereas conviction recorded against A-2 and A-7 for commission of the offences under Sections 489B and 489C is hereby upheld but the sentence imposed on them is reduced and by this order A-2 and A-7 are sentenced to suffer RI for seven years and fine of Rs.2,000/- and in default of payment of fine, SI for a further period of four months for

commission of offence under Section 489B and RI for five years and fine of Rs.2,000/- and in default of payment of fine, SI for a further period of four months for commission of offence under section 489C IPC. It is also ordered that both the substantive sentences shall run concurrently.

Both the appeals are accordingly disposed of by partly allowing the same to the extent indicated above.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

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